

August 10, 1945

Mr. R. A. Hofmann  
Arizona Highway Department  
Eng'r. of Bridges and Dams  
Phoenix, Arizona

## LAW LIBRARY ARIZONA ATTORNEY GENERAL

Dear Mr. Hoffman:

Your letter of July 9, 1945 addressed to Mr. R. G. Langmade, Special Counsel, asking the following questions has been referred to this office for our opinion:

"This Department would like your opinion in the matter of fees to be collected or not to be collected by the Dam and Supervision in the following case:

"The owner, Lyman Irrigation Company, wishes to install a new outlet pipe and control gate in the River #1 Dam, on the Little Colorado River, near Springerville.

"This work necessitates cutting a section out of the earth Dam above the present outlet from the top to the bottom of the Dam, in order to replace the present decaying wooden outlet culvert. Such an operation is an extra-ordinary maintenance operation necessary for the proper functioning of the outlet works. There is to be no change in the size or storage capacity of the Dam. The work comes under the supervision of the Department as to methods, material and workmanship.

"Question No. 1. Is a formal application necessary?

"Question No. 2. Can maintenance repairs of this nature be classed as alterations when such do not alter the original shape, size or capacity of the Dam?

"Question No. 3. Does the Lyman Irrigation Company have to pay the \$50.00 application fee and the 1% of construction cost fee as required for a new Dam or alterations of an old Dam?"

Answering your first question, Section 75-1303 requires that an application shall be filed with the state engineer before any work shall be commenced on a new dam or the enlargement of an existing dam, etc.

Section 75-1305, Approval of repair, alteration, or removal of dam.

We call your attention to the last sentence of said Section that reads:

"The application herein prescribed shall be as provided in the second preceding section." (75-1303)

You will note the first part of Chapter 75-1305 states that the engineer may waive some of these requirements.

We call your attention to that part of Section:

"It shall be unlawful to construct, reconstruct, repair, operate, maintain, enlarge, remove, or alter any dam, except upon the approval of the state engineer."

Paragraph 2 of Section 75-1304 reads as follows:

"An application shall not be considered until the fifty dollars (\$50.00) fee has been paid, and no construction shall be permitted until additional fees required are received."

Paragraph 5 of the above cited Section so far as it pertains to your question reads as follows:

"The fees herein provided shall be required of all applicants including the state and its departments, institutions, or agencies; and all other agents whatsoever without a single exemption."

Answering your second and third questions, we submit that the matters therein stated present an engineering rather than a legal question. It is within the scope of state engineer's duties to determine whether a proposed dam work constitutes a "repair" or an "alteration".

Therefore, if the state engineer of the Highway Department considers the work to be done by the Lyman Irrigation Company as alterations, then it is our opinion that they would have to pay a \$50.00 application fee and the 1% additional fees as provided by Section 75-1304; but if, on the other hand, your Department engineer classifies the work as repairs, then it is our opinion that the Lyman Irrigation Company would have to pay only the \$50.00 application fee in accordance with Section 75-1304.

Yours very truly,

JOHN L. SULLIVAN  
Attorney General

MAURICE LARTH  
Assistant Attorney General

MB:jw